

## SUBSOIL OF THE SEA

Members of the Executive Committee

Gentlemen:

Your Committee on the Subsoil of the Sea submits the following report.

This Committee was appointed by President Ryan of the American Branch in response to a request from the London Secretariat of the Association. The Association, at its last biennial meeting in 1948 passed a resolution for appointment of a committee to study the problems of Rights to the Sea Bed and its Subsoil and to report thereon at the next meeting of the Association to be held in Copenhagen, Denmark in August 1950. In compliance with this resolution the Executive Council of the Association appointed the following gentlemen to be members of a Committee on Rights to the Sea Bed and its Subsoil. Joseph W. Bingham, Professor P. Fischer, Professor G. Gidel, Dr. O. Kahn Freund, Professor H. Waldock, A. Jaffe, W. Harvey Moore and Jonkheer P. R. Feith (rapporteur). The report of your committee is designed to assist the London Committee in the final drafting of its report and the Copenhagen conference in its deliberations.

In the Second tentative draft of its report the London committee unanimously reached the following conclusions which are herein summarized, rephrased and rearranged for purposes of brevity.

1. International Law recognizes that the sea-bed and its subsoil under the territorial waters of a state are subject to the jurisdiction and dominion of that state without previous proclamation or occupation.

2. Because of official claims through legislation and executive acts of a large number of states during the past ten years it can be said that similar jurisdiction and dominion now is recognized by customary international law in favor of a coastal state over the sea-bed and its subsoil beyond its territorial waters to the edge of the continental shelf.

The Committee cites in support of this conclusion in the following instances and documents against which it knows of no protest of any government as far as the continental shelf principle is concerned.

I. The texts of the following official documents:

1. RUSSIA

- a. Imperial Declaration of September 29, 1916;
- b. Sovjet memorandum of November 4, 1924.  
French excerpts of texts in V. L. Lakhtine, *Rights over the Arctic* (1928), pp. 43-45.

2. UNITED KINGDOM

- a. Trinidad and Tobago
- aa. Treaty between Great Britain and Venezuela relating to the submarine areas of the Gulf of Paria, Caracas, February 26, 1942.  
Text in Treaty Series No. 10, 1942.
- bb. The submarine areas of the Gulf of Paria (annexation)  
Order 1942, London, Aug. 6, 1942.

- cc. Submarine (Oil Mining) regulations.  
Government notice No. 87 of May 22, 1945.  
Supplement to the Royal Gazette. Vol. 114 No. 43 dated  
May 26, 1945.
  - b. The Bahamas.  
The Bahamas (alteration of boundaries) Order in Council  
1948, London, Nov. 26, 1948 No. 2574.
  - c. Jamaica (alteration of boundaries) Order in Council, 1948,  
London, November 26, 1948 No. 2575  
See re b) and c) parliamentary debates (Hansard) Decem-  
ber 17, 1948.
3. VENEZUELA
  4. ARGENTINA
    - a. "Decreto" of January 24, 1944 No. 1386.
    - b. "Decreto" of October 11, 1946 No. 14708.  
Texts in Boletín Oficial de la República Argentina, March  
17, 1944 and December 5, 1946; Eng. trans. 41 A.J.I.L.  
supp. 11.
  5. UNITED STATES OF AMERICA
    - a. Truman proclamations Nos. 2667 and 2668 of September  
28, 1945 (Federal Register 12303 and 12304);
    - b. Executive Order of September 28, 1945 No. 9633. Texts  
also in A.J.I.L. 40, 1946, supplement, pp. 45-48.
    - c. Press Release of September 28, 1945.  
13 Dept. of State Bulletin 484.
  6. MEXICO
    - a. Proclamation of October 29, 1945.  
"El Nacional" Mexico, October 30, 1945.
    - b. Decree of February 25, 1949.  
Diario Oficial, March 11, 1949.
  7. CHILE  
"Decreto" of July 23, 1947.  
El Mercurio (Santiago), June 29, 1947.
  8. PERU  
"Decreto Supremo" of August 1, 1947 No. 781.  
Text in El Periódico-Diario Oficial, Aug. 11, 1947.  
El Comercio (Lima), Aug. 11, 1947; 7 Revista Peruana de  
derecho internacional 301.
  9. NICARAGUA  
Article 2 of Constitution of January 22, 1948.  
Text in Official Gazette No. 16.
  10. COSTA RICA
    - a. "Decreto" of July 27, 1948, No. 116;
    - b. "Decreto" of November 2, 1949 No. 803; Texts in la Gaceta  
(Costa Rica), July 29, 1948 and November 5, 1949.

11. SAUDI ARABIA

Decree No. 6/4/5/3711 by King Ibn Saud of the Kingdom of Saudi Arabia, May 28, 1949.

The official Arabic text is published in Umm al Qura (Mecca) supplement No. 1263, 2 Sha'ban 1368, May 29, 1949.

English translation in the supplement of A.J.I.L., July 1949 vol. 43, pp. 154-157

12. IRAN

Bill about the Continental Shelf of Iran, approved by the Iranian Council of Ministers and submitted to Majlis of May 19, 1949.

13. QATAR

Proclamation by the Ruler of Qatar of June 8, 1949.

14. TRUCIAL COAST.

15. KUWAIT.

The report considers this a satisfactory development of law.

"In the past ten years this continental shelf theory has found general favor, especially in the Western hemisphere and the Near East and evidently it fills the gap in international law on this subject."

It has been suggested by some members of the Association that it is premature to state that the propositions endorsed by the London Committee as principles of international law are such, and they therefore advocate a multi-lateral treaty to adopt them. Whether the London Committee is right or not involves, perhaps, a matter of semantics and a matter of degree — What is international law? When does a proposition become one of international law without express adoption by treaty? In the light of (1) the many State acts in accord with President Truman's two proclamations (some exceeding them in extent of claims); (2) the total absence of objection from any State to the Proclamation concerning the resources of the continental shelf; (3) the obvious improbability that any serious objection will be raised in the future; (4) the concordant opinion of able commentators that the Proclamations mark a great historic turning point in the development of the international law of sea areas and will tend to make it adequate for modern needs instead of a hampering, anachronistic barrier, the London Committee and your Committee considered that it was proper to say that the proposition of our Committee reports are established principles of modern international law. The Committees' propositions are a prediction that future State action will be in accord with them. If this prediction turns out to be correct, the Committees are right in their assertion.

Your Committee agrees that there is wide room for difference of opinion, such as often occurs between lawyers over matters of domestic common law covering new problems, and it realizes that such differences may arise in the debates at the Copenhagen Conference next Summer. However, the two Committees were unanimous in their conclusion, and are confident that time will prove that they are right, although they respect opposing opinions as conservative, reasonable views, which they hereby record.

3. The term continental shelf should be given its geological meaning in connection with this development of international law and the extent of a particular continental shelf should be determined on the basis of geological

evidence and not limited arbitrarily by any rigid water depth criterion, such as the 200 metre or 100 fathom limit although geologists are of the opinion that a continental shelf exists only exceptionally at a greater depth. However, "the Committee would welcome a development of international law which presumes that the sea-bed and its subsoil is to be considered continental shelf" up to a water depth of 200 metres "and allows interested parties to prove that a part of the sea-bed and its subsoil which underlies a water depth of more than 200 metres should also be defined as continental shelf according to the conception of the term in geology."

4. Nevertheless, the London Committee is of the opinion that international law has not worked out all the consequences of the continental shelf principles. The Committee rejects the suggestion that international law has established norms for settling disputes between two or more states sharing the same continental shelf. The "Gulf of Paria" division is a precedent, not a norm. In the opinion of the Committee disputes between two or more states sharing the same continental shelf will have to be decided according to equitable principles to be settled by arbitration. (Your (American Branch) Committee would add, "agreement, or judicial decision.") However the bordering states should share jurisdiction and control of the continental shelf to the exclusion of other nations and may "by mutual agreement divide between them such common part of the continental shelf."

The London Committee suggests that the 44th Conference of the International Law Association endorse the principles of the foregoing conclusions with the following provisions (rephrased and abbreviated).

(a) These principles do not imply a change in the law concerning territorial waters or extra-territorial waters over the continental shelf, or concerning air traffic above the epi-continental shelf waters, or concerning the laying and operation of cables or pipelines on the sea-bed.

(b) "Exploration and exploitation of the resources of the sea-bed and its subsoil of the continental shelf is only allowed when not interfering with vital interests of shipping and fisheries (e.g. no obstruction of major traffic routes, no pollution of fishing waters, restriction of seismic exploration."

(c) The coastal state shall give due notice "to interested parties, (governments, shipping and fishing interests, airlines, etc.)" before construction of installations for exploration and exploitation of the sea-bed and its subsoil and shall provide them with efficient warning apparatus (lights, sound signals, radar, buoys, etc.).

(d) The coastal state which has constructed such an installation which reaches above sea-level shall be entitled to exercise such control and jurisdiction as are necessary to protect it over a safety belt of 500 metres around it. Such installations shall not be considered "islands" or "elevations of the sea-bed" within the meaning of international law.

Your Committee believes that the conclusions of the London Committee are in accordance with sound development of international law in the common interests of the international community and certainly in accord with American interests and the policy of the government of the United States as evidenced by President Truman's proclamation of September 28, 1945. They also are in accordance with interests of national defense. It therefore endorses them subject to such refinement and further definition of details as

may be developed by discussions at the Copenhagen conference and the similar conferences of other authoritative organizations.

The International Law Commission of the United Nations intends to discuss the status of the high seas at Geneva this spring and to consult governments and international organizations in the fields of law, shipping, fisheries and geology in an effort to arrive at international agreement of the legal status of the continental shelf outside territorial waters. The Institut de Droit International intends to discuss the continental shelf problem at a meeting in Bath in September of this year and the International Bar Association has appointed a committee on the topic and intends to discuss at its Congress in London in July "the character and scope of rights exercised by states in the Western hemisphere over coastal waters and the subsoil thereunder."

In conclusion it may be prudent, to state that of course the determinations and principles suggested herein relate only to the adjustment by international law of rights and powers of states of the international community inter se and have no controlling force over claims between the central government and those of the component states of a federal or other union. The adjustment of such claims is a matter of the municipal law of the union exclusively. In the case of the United States this is expressly provided in the executive order accompanying President Truman's proclamation.

Your Committee calls attention to the recent Report of the Committee of the French Branch of the International Law Association on the Subsoil of the Sea, dated March 7, 1950.

Joseph Walter Bingham, (Chairman)  
Arthur M. Boal  
J. Chrys Dougherty  
W. H. Hayden

Charles Cheney Hyde  
Herbert J. Liebesny  
William E. Masterson  
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